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No. 93-1213

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

MANUFACTURERS HANOVER LEASING CORPORATION,
Petitioner,

v.

HAROLD G. LOWERY,
Trustee of Robinson Brothers Drilling, Inc.
and Robinson Brothers Drilling Company
Respondent.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Tenth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF AMICUS CURIAE OF THE EQUIPMENT LEASING ASSOCIATION OF AMERICA, INC., SUPPORTING THE GRANTING OF THE PETITION FOR CERTIORARI

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The Equipment Leasing Association of America, Inc. (ELA) hereby moves for leave to file the annexed Brief Amicus Curiae of The Equipment Leasing Association of America, Inc. supporting the granting of the Petition For Certiorari. ELA's interest in this matter is set forth in the annexed Brief Amicus Curiae. A written consent has been obtained from petitioner, but consent has been refused by

respondent. These letters are being lodged with the Court.

Respectfully submitted,

/s/ Ellis Lyons
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The Equipment Leasing Association of America, Inc. (ELA), as amicus curiae, supports petitioner in urging that the petition for a writ of certiorari in this case be granted.

INTEREST OF ELA

ELA is the major national trade association in the multi-billion dollar equipment leasing industry, with

over 700 member companies, located throughout the United States and in foreign countries, engaged in every aspect of leasing equipment to business, commercial, governmental and agricultural organizations.

According to the Department of Commerce, the volume of equipment leasing in this country, as measured by original cost of the equipment, was $125 billion in 1993.[1] ELA estimates that ELA's members account for about two-thirds of this volume.

Equipment leasing represents over 30 percent of all capital investment in the United States each year. Second only to the commercial paper/bond market, leasing is the next largest source of investment capital for business, industry and agriculture in our economy. Equipment is also leased to federal, state and local governmental agencies for a variety of important public uses.[2]

Equipment lessors, when negotiating and entering into lease transactions, often require guarantees from principal shareholders, parent or affiliated corpora-

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[1] U.S. Department of Commerce, 1994 Industrial Outlook, p49-1.

[2] Equipment leasing is utilized by, and helps to fuel the economic growth and productivity of, virtually every segment of our economy. The types of equipment leased for business purposes include agricultural; aircraft; automobiles; computers; construction; container and intermodal equipment; electrical power generation; furniture and fixtures; industrial; manufacturing; materials handling; medical; office machines; pollution control and environmental; railroad rolling stock; telecommunications; trucks and trailers; and vessels. Equipment leasing is one of the major methods by which American businesses acquire the capital equipment and financing needed to succeed in today's highly competitive domestic and international markets.

tions or other "insiders" of lessees. This is particularly common in the case of lessees that are small businesses or new businesses where prudent business requires that the lessor obtain credit enhancement. The decision below adversely affects these classes of transactions because it exposes lessors in such cases to a one-year preference period in bankruptcy even though there would have been only a 90-day exposure in the absence of the guarantee. This, in turn, adversely affects the number of lease transactions entered into, the complexity of the negotiations in connection therewith, and the ultimate pricing of the transactions.

As the national trade association for equipment leasing companies, ELA is vitally interested in matters such as these which affect the operations of the members of the equipment leasing industry.

REASONS FOR GRANTING CERTIORARI

We rely on the legal analysis in the Petition for Certiorari for a showing of why the decision below should, after consideration on the merits, be duly reversed by this Court. What we wish to emphasize are the important reasons for this Court to grant certiorari in order to review the merits.

It is an unfortunate phenomenon of our times that bankruptcies occur all over the nation in substantial volume. The lessees of equipment are no exception; equipment leasing companies find that many of their lessees end up in the bankruptcy courts either as debtors in bankruptcy or in the hands of bankruptcy trustees.

Prudent lessors have undertaken in many cases to protect themselves against losses resulting from the

bankruptcy of their lessees by obtaining guarantees of lessee rental obligations, often from "insiders." Under the decision below, this prudent practice of obtaining guarantees from the lessee's principals or affiliates or other "insiders", instead of reducing the lessor's risk in bankruptcy, as was intended, has exposed the lessor to a quadrupled risk of preference liability—for a period of one year instead of 90 days. The imposition of this additional risk on lessors leads to higher pricing demands and more rigid credit requirements and, in many cases, will result in transactions not being consummated at all. We submit that this Court should not permit these unintended results to occur without its full consideration of whether they are permissible under the Bankruptcy Code.

As is apparent from this brief filed by ELA, the decision of the court below has much broader application than the debtor-creditor relationship involved in the present case. It adversely affects another very large segment of the American economy—the equipment leasing industry—at a time when impetus, rather than slowdown, is called for.

CONCLUSION

For the foregoing reasons, as well as those set forth in the petition for certiorari, the petition for certiorari should be granted.

Respectfully submitted,

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